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7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 In re

10 SOPHIA WONG LOVRE,

No. 04-12457

11 Debtor(s).
12 _____/

13 Memorandum re Good Faith
14 _____

15 Prior to her Chapter 11 filing, debtor Sophia Wong Lovre was being sued by creditor Prologis
16 Limited Partnership in state court. Wong was a general partner of a partnership which had defaulted on
17 a 5-year lease of commercial premises. Total damages sought against Lovre by Prologis exceeded \$1.4
18 million.

19 Lovre filed her Chapter 11 petition on October 15, 2004, just prior to a hearing on Prologis'
20 motion for a writ of attachment. Since the filing, there have been two significant events: Prologis has
21 reduced its claim to \$833,000.00 and Lovre has sold one of her real properties for enough to be able to
22 pay all allowed claims in full. She now asks the court to confirm such a plan. Prologis objects, and
23 seeks dismissal of this case.

24 Prologis' motives for objecting to the plan and seeking dismissal are found in § 502(b)(6) of the
25 Bankruptcy Code. That section puts a cap on allowable claims for unpaid rent. Although Prologis
26 would be entitled to damages of over \$800,000.00 under state law, its claim in bankruptcy is limited to
about \$532,000.00.

1 Bad faith is a grounds for dismissal of a case, and a finding of good faith is required by §
2 1129(a)(3) for plan confirmation. If Lovre has acted in bad faith, her plan should not be confirmed and
3 her case should be dismissed. If she has acted in good faith, then Prologis' motion to dismiss should be
4 denied and the plan confirmed.

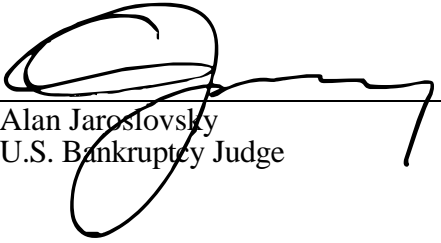
5 The court begins its analysis by noting that neither of the two principal facts urged by Prologis -
6 that Lovre was solvent and filed only to take advantage of a provision of the Bankruptcy Code -
7 constitute *per se* bad faith. *In re Sylmar Plaza, L.P.*, 314 F.3d 1070, 1075 (9th Cir. 2002). Nor is filing
8 with intent specifically to take advantage of 502(b)(6) necessarily bad faith. *In re Liberate*
9 *Technologies*, 314 B.R. 206, 216 (Bankr.N.D.Cal. 2004). As Judge Carlson noted in *Liberate*, the
10 correct test for bad faith is not what Code provisions are to be invoked, but rather whether there was a
11 present need for bankruptcy relief when the petition was filed. 314 B.R. at 218.

12 Lovre has established that she had a good faith present need for a Chapter 11 filing. Not only
13 was Prologis suing her for an amount almost twice its current claim which could have rendered her
14 insolvent or close to it, but she was in immediate jeopardy of losing control of her real property by writ
15 of attachment. Had this happened, she could have lost her ability to liquidate her real property in an
16 orderly manner and she also risked serious capital gains tax liability. Not only did Lovre have a present
17 need for bankruptcy protection, she had an urgent need. Prologis itself created this need. Once in
18 Chapter 11, Lovre promptly took the necessary steps to pay her creditors in full. The court finds no bad
19 faith in Lovre's conduct.

20 For the foregoing reasons, Prologis' motion to dismiss will be denied and Lovre's plan will be
21 confirmed. Counsel for Lovre shall submit appropriate forms of order.

22 Dated: June 14, 2005

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Alan Jaroslovsky
U.S. Bankruptcy Judge